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No. 05-

IN THE

Supreme Court of the United States

NOKIA INC., *et al.*,

Petitioners,

v.

GARRETT NAQUIN, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Pursuant to authority delegated by Congress, the Federal Communications Commission ("FCC") has promulgated detailed regulations governing radio frequency ("RF") emissions from wireless telephones. In particular, the FCC has determined that wireless telephones that comply with federal testing and RF emission standards are safe for consumer use throughout the United States.

Respondents challenge that determination in class actions alleging that FCC-approved wireless telephones are nonetheless defective and unreasonably dangerous under state tort law because of the level of RF emissions they produce. The district court held that respondents' claims were preempted by the federal regulatory regime, but a divided panel of the Fourth Circuit reversed that judgment. The questions presented are:

1. Whether the comprehensive federal RF testing and emission rules for wireless telephones preempt lawsuits that seek to declare FCC-approved wireless telephones "unreasonably dangerous" as a matter of state law.

2. Whether the categorical statutory ban on state "entry" regulation in 47 U.S.C. § 332(c)(3)(A) precludes state law from imposing new RF standards or operational requirements on wireless telephones as a condition for providing wireless service within the State.

LIST OF PARTIES

A. Petitioners

AT&T Corporation; Audiovox Communications Corporation; BellSouth Mobility LLC, *successor-in-interest to BellSouth Mobility, Inc.*; Cingular Wireless LLC,*formerly known as* BellSouth Mobility, Inc.; Ericsson Inc.; Kyocera Wireless Corporation, *as successor in interest to Qualcomm;* Motorola, Inc., *incorrectly named as Motorola Corporation;* NEC America, Inc.; Nextel South Corp., *incorrectly named as Nextel Communications, Inc.;* Nokia Inc.; Philips Electronics North America Corporation ("PENAC"); QUALCOMM Incorporated, *incorrectly named as Qualcomm Corporation.*

B. Respondents

Garrett J. Naquin; Judith A. Kaufman; Asher Rubenstein.

C. Not Parties

The following entities were listed as defendants-appellees in the caption to the circuit court's decision below, but *are not* parties to this petition: Ericsson Wireless Communications, Inc.; Nextel Partners Operating Corporation; Cingular Wireless a/k/a Washington Baltimore Cellular Limited Partnership; Cellco Partnership doing business as Verizon Wireless; Verizon Communications Inc.; Verizon Maryland Inc.; Panasonic Corporation of North America, incorrectly named as Matsushita Corporation of America; SBC Communications, Inc.; Cellular One Group; Voicestream Wireless Corporation, now known as T-Mobile USA, Inc.; Communications Electronics, Inc. a/k/a C.E.I., Inc.; Comcast/Metrophone; Southern Communications Services, Inc., incorrectly named as Southern Telecom, Inc., also known as Southern Linc; Powertel, Inc.; Powertel PCS, Inc.; Powertel/Atlanta, Inc.; MCI Worldcom Communications,

Inc.; Mitsubishi Wireless Communications, Inc.; Globalstar USA, Inc.; Baltimore Business Communications, Inc.; Sony Electronics Inc.; SANYO North America Corporation, incorrectly named as Sanyo North America, Inc. and Sanyo Corporation; Samsung Electronics America, Inc.; Sprint Spectrum L.P. doing business as Sprint PCS; Sprint PCS Limited Partnership; Cellular Telecommunications & Internet Association; Telecommunications Industry Association; Nextel Communications of the Mid-Atlantic, Inc. and Nextel of New York, each incorrectly named as Nextel Communications, Inc.; SBC Telecom Inc.; Cellular Telecommunications Industry Association; Westinghouse Communications; John Does 1-100; AB Cellular Holdings, LLC, doing business as LA Cellular, doing business as Los Angeles Cellular Telephone Company; Radiofone; Planet Cellular Communications, Incorporated; Visitor Cellular L.L.C.; Bell South Mobility; U.S. West Wireless, L.L.C.; U.S. West Communications, Incorporated; GTE Mobilnet of San Diego, Incorporated; GTE Wireless of San Diego, LLC; Cellular Carriers Association of California; LGIC Corporation; Panasonic Corp.; Samsung Electronics America, Inc.

CORPORATE DISCLOSURE STATEMENT

AT&T Corp. is a public company. AT&T Corp. has no parent company as of the date of this filing, but on January 30, 2005, AT&T Corp. entered into an Agreement and Plan of Merger with SBC Communications, Inc. (SBC) and a subsidiary of SBC. No publicly held company owns more than 10% of the stock of AT&T Corp. as of the date of this filing.

The only publicly held company that owns 10% or more of the stock of Audiovox Communications Corporation is Audiovox Corporation.

BellSouth Mobility LLC ("BellSouth Mobility") is a wholly-owned subsidiary of Cingular Wireless LLC. No publicly held corporation owns more than 10% of the stock of BellSouth Mobility.

Cingular Wireless LLC, formerly known as BellSouth Mobility, Inc., a/k/a Southwestern Bell Wireless, formerly known as Southwestern Bell Mobile Systems, Inc., has no parent company. Cingular Wireless LLC is indirectly owned by SBC Communications, Inc. and BellSouth Corporation, which are the only publicly held corporations with a 10% or more ownership interest in Cingular Wireless LLC.

Ericsson Inc.'s parent company is Ericsson Holding II Inc., a subsidiary of Telefonaktiebolaget LM Ericsson. Telefonaktiebolaget LM Ericsson is publicly held and trades in the United States through American Depositary Receipts under the name LM Ericsson Telephone Company.

The only publicly held company that owns 10% or more of the stock of defendant Kyocera Wireless Corporation is Kyocera International, Inc.

Motorola, Incorporated has no parent corporation and no publicly held company owns 10% or more of its stock.

NEC America, Inc. ("NEC") is a privately owned New York corporation. The parent corporation of NEC is NEC USA, Inc., which is also privately held. The parent of NEC USA, Inc. is NEC Corp. NEC Corp. is listed on the NASDAQ for ADR (American Depository Receipts).

Nextel South Corp. is a wholly-owned subsidiary of Nextel Finance Company, which, in turn, is a wholly-owned subsidiary of Nextel Communications, Inc. Legg Mason Capital Management, Inc. and Fidelity Management and Research Company each own more than 10% of the stock of Nextel Communications, Inc. On August 3, 2005, the Federal Communications Commission and the Antitrust Division of the Department of Justice approved a proposed merger between Nextel Communications, Inc. and Sprint. The deal is expected to close in the third quarter of 2005. Under the terms of the proposed transaction, all of the stock of Nextel Communications, Inc. is to be owned by Sprint Nextel Corporation.

Nokia Inc. is a privately held Delaware corporation and wholly-owned subsidiary of Nokia Holding Inc. Nokia Holding Inc. is a privately held Georgia corporation and wholly-owned subsidiary of Nokia Corporation, a public limited liability company incorporated under the laws of the Republic of Finland. Nokia Corporation is the ultimate parent company, and as far as Nokia is aware, no private or publicly held company owns 10 percent or more of Nokia Corporation's stock.

Nokia Mobile Phones Inc., f/k/a Nokia Mobile Phones Americas Inc., f/k/a Nokia Mobile Phones Manufacturing USA Inc., is a privately held Delaware corporation that was incorporated on May 7, 1992 as a wholly-owned subsidiary of Nokia, Inc. n/k/a Nokia Holding Inc., a Georgia corporation. Nokia Mobile Phones Inc. changed its corporate name to Nokia Inc. effective January 1, 2001.

Philips Electronics North America Corporation ("PENAC[illegible]s a wholly owned subsidiary of Philips Holding [illegible] Inc., which in turn is a wholly owned subsidiary of Koninklijke Philips Electronics N.V., which is a publicly traded company.

No publicly held company owns 10% or more of the stock of Qualcomm Incorporated, and Qualcomm Incorporated has no parent corporations.

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